

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

05 Civ. 5808 (KMW)

-against-

ORDER

JON E. HANKINS,
TENET ASSET MANAGEMENT, LLC, and
TENET CAPITAL PARTNERS CONVERTIBLE
OPPORTUNITIES FUND, LP,

Defendants.

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WOOD, U.S.D.J.:

The Court has reviewed the July 29, 2005 report submitted by the Temporary Receiver, the proposed order of the same date, Hankins' August 9, 2005 objections to both, and the Temporary Receiver's August 10, 2005 response. The Court seeks the comments of counsel regarding the Court's proposed modifications, which are stated below.

Paragraph one of the proposed order states that the Temporary Receiver's report is "accepted and approved." However, Hankins disputes several factual characterizations in the report, including:

- 1) the amount of money disbursed to Hankins by the Management Company for his personal benefit. See Report ¶ 27. This sum apparently includes money paid to Mina Capital Management, LP, which Hankins contends was not to his direct benefit;

2) whether Hankins' wife performed professional services for the Management company warranting reimbursement, See Report ¶ 24; and

3) the ownership of a Dell computer and its various accessories, See Report ¶ 16-18. The Report also alleges in these paragraphs that Hankins' removal of this computer from the office was in violation of the Court's order requiring that parties not destroy alter or conceal records, however the Temporary Receiver has a copy of the computer's hard drive, so this contention is apparently without merit.

Hankins also objects to various characterizations in the report.

The Court's concern is that "accepting and approving" the Report, will be construed as the Court making findings concerning the disputed facts. The Court suggests that Paragraph 1 of the order be amended as follows:

1. ORDERED that the Declaration and Report of Receiver dated July 29, 2005 is accepted, however the Court makes no findings as to the disputed facts contained therein and notes that paragraphs 16-18, 24, and 27 currently are disputed by defendant Jon E. Hankins.

Second, the proposed waiver of liability in paragraph 4 of the proposed order appears to be overly broad. The court is considering narrowing the waiver as follows:

4. The Temporary Receiver's request for a waiver of liability is denied; the immunity of a court appointed receiver from suit is delineated by the law of this jurisdiction and is in no way altered by this Order or the acceptance of the Temporary Receiver's July 29, 2005 Report.

ORDERED, that the parties deliver any comments on these proposed modifications on or before August 19, 2005.

Dated: New York, New York
August 12, 2005

Kimba M. Wood
Kimba M. Wood
United States District Judge